

May 15, 2024

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4
5 *In Re* FLINT WATER CASES Case No. 16-10444
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7 _____/
8 STATUS CONFERENCE
9

10 BEFORE THE HONORABLE JUDITH E. LEVY
11 UNITED STATES DISTRICT JUDGE

12 MAY 15, 2024

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1 P R O C E E D I N G S

2 THE CLERK: The United States District Court for the
3 Eastern District of Michigan is now in session and the Genesee
4 County Circuit is now in session.

5 The Honorable Judith E. Levy presiding and the
6 Honorable David Newblatt presiding.

7 THE COURT: Great. And the good news for me is that
8 any agenda items that I had or considered are -- have been
9 resolved or are not on the agenda.

10 So I get to turn it over to Judge Newblatt to address
11 the two issues, including his motion for a change of venue,
12 and then just the submission of a proposed schedule for People
13 vs Veolia.

14 HONORABLE JUDGE NEWBLATT: Very good. Thank you,
15 Judge Levy.

16 Could I have counsels' appearance with regard to the
17 matters before me, please?

18 MR. OLSEN: Good afternoon, Your Honor. Mike Olsen
19 on behalf of Veolia. I'm here with Alaina Devine and Jim
20 Campbell.

21 MR. KUHLM: Good morning, your Honor. This is Richard
22 Kuhl on behalf of the People.

23 Just so you know, I'll be addressing the scheduling
24 issues and Mr. Gambill will be addressing the venue issues.

25 HONORABLE JUDGE NEWBLATT: Your name again? I'm

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1 sorry.

2 MR. KUHL: Richard Kuhl.

3 THE COURT: Thank you, sir. All right. Okay.

4 I guess I thought that we would address the venue
5 motion first. So I guess that would be Mr. Olsen.

6 MR. OLSEN: Yes, Your Honor. I'll try to be brief
7 because you've seen much of this in the papers already.

8 As you know, Michigan court rule 2.222 authorizes the
9 Court to change venue to ensure a fair trial when an impartial
10 trial cannot be held where the action is pending.

11 We believe there are a number of reasons why we can't
12 have an impartial jury in Genesee County.

13 First, we think that a jury in Genesee County cannot
14 meet the qualification requirements under MCR 2.511(E) for two
15 basic reasons.

16 One, nearly every or most potential jurors are going
17 to have a conflict of interest. And most, if not every,
18 potential juror will have a biased, preconceived opinion about
19 the facts in the case.

20 2.511(E) specifically excludes jurors, including any
21 juror who's related within the ninth degree of consanguinity
22 or affinity to one of the parties or attorneys, is or has been
23 a party adverse to the challenging party in a civil action,
24 has a financial interest or is interested in the questions
25 like the issue to be tried.

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1 In our view, most, if not all, of the Genesee County
2 residents fall within one of those buckets.

3 As an initial matter and just about every Flint
4 resident is going to be either a party or a class member in a
5 Flint water related lawsuit against VNA that's seeking
6 property personal injury or economic loss damages. Each of
7 them would be a party adverse to VNA pursuant to the rules.
8 And so they would be disqualified.

9 And based on recent census data that looks like
10 somewhere between 20 to 25 percent of the jury pool.

11 In addition, there are many, many residents outside
12 of Flint who are going to be parties or class members in those
13 lawsuits who are parties or class members in those lawsuits
14 because the allegations are that many non Flint residents
15 travelled to Flint and drank the water or were exposed to the
16 water.

17 Some census data has indicated that over 80 percent
18 of Flint's workforce commutes to Flint. In fact, any Genesee
19 County resident with any dealings in Flint potentially has an
20 interest in a question like the issue to be tried. Whether
21 they drank the water or transacted business there or they
22 allegedly have been negatively impacted by the Flint Water
23 Crisis.

24 Further, Genesee County residents who were related,
25 even distantly, to one of the parties or class members will be

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1 disqualified pursuant to the Michigan court rules. And so at
2 least in our view, if you consider what buckets will be
3 excluded from an eligible jury pool, we think that most, if not
4 all, Genesee County residents will not be entitled to serve
5 pursuant to the Michigan county rules.

6 In addition to that fundamental procedural problem,
7 the rules also exclude jurors who have any perceived or
8 expressed or implicit biases against a party or an attorney or
9 shows a state of mind that will prevent the person from
10 rendering a just verdict or has a preformed opinion that would
11 improperly influence the person's verdict.

12 It's our view that most, if not all, Genesee County
13 residents would be disqualified on that basis as well. And we
14 think it would be very difficult, if not practically
15 impossible, to find sufficient members of the Genesee County
16 jury pool who do not have some preformed opinion about the
17 facts or issues in the case.

18 There has been substantial and ongoing media coverage
19 of the Flint Water Crisis that has been prejudicial to VNA.
20 That included more recently through the state settlement, then
21 the LAN settlement, then the very recent proposed class
22 settlement with VNA.

23 There has been daily media coverage of the first
24 bellwether trial. And that reporting has been extensive and
25 ongoing.

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1 Even the U.S. Supreme Court has held that when a
2 community has been exposed repeatedly and in depth to pretrial
3 publicity, the entire community should be presumed to be
4 prejudiced by it, entitling the defendant to a change in
5 venue.

6 That was *Rideau v Louisiana*, *Patton v Yount*, found a
7 similar conclusion.

8 And so we think that for all of those reasons, that
9 it would be practically impossible to get a fair trial in
10 Genesee County. And that's why we're seeking to transfer
11 venue.

12 HONORABLE JUDGE NEWBLATT: I have a question. And I
13 have Judge Farah's opinion from when he denied the previous
14 motion to change venue. His holding was as follows. I'll
15 just read it.

16 Having decided that the Court may defer decision on
17 venue at least until attempting to select a local jury through
18 voir dire, the Court must nevertheless determine on what
19 record ultimately decision will be made -- the ultimate
20 decision will be made. Obviously from the above discussion,
21 that record will include voir dire. But defendants have asked
22 the Court to consider written affidavits, oral testimony or
23 depositions, and relevant studies.

24 The Court will not at this time rule out
25 consideration of these evidentiary items. But they will

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1 potentially augment voir dire, not replace it.

2 So and I find it interesting that you didn't cite
3 Mr. Roland's declaration at all in your remarks today, which I
4 would assume would fall in one of those categories that Judge
5 Farah referred to.

6 But my question is why isn't that the law of the
7 case? Why are we even having this motion?

8 Judge Farah made the ruling. The AG made this point
9 in its brief. Judge Farah made a ruling that we're not going
10 to change venue at this time. He definitely saw an issue.
11 Potentially he saw the concern, expressed that in his opinion.
12 But his decision was we're not going to transfer venue until
13 after we try to pick a jury.

14 And so my question is why is -- why are we having
15 this motion? Why isn't that the law of the case?

16 MR. OLSEN: So I think, Your Honor, it's a very fair
17 question. I'd make a couple of points in response to your
18 question.

19 First, as you noted, Judge Farah didn't reach the
20 merits of the venue change motion. He just decided it was
21 premature until you tried to seat an impartial jury during the
22 voir dire process.

23 I would say a lot has changed between then and now.
24 And there's been a lot of additional and ongoing press that
25 makes it very difficult to conceive of sitting an impartial

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1 jury in this case. I think the rules about jurors being
2 related even distantly I think makes it practically
3 impossible.

4 But I don't think that the extent Judge Farah
5 concluded this, but with respect, I think he's incorrect and I
6 think the AG is wrong that there's any law or rule in Michigan
7 that says you can't decide a venue motion prior to going
8 through the voir dire process.

9 I think practically if it's not clear whether or not
10 you can sit a impartial jury. I agree it makes perfect sense
11 to try through the voir dire process and evaluate it as a
12 result of that voir dire process.

13 I think in this case, you have an extreme example
14 where given the circumstances in this case, in this county,
15 where merely all of your potential jurors are going to have an
16 interest or be related to have somebody with an interest or
17 have been inundated with press that will give them preformed
18 views of the issues in this case, I think that the sooner that
19 that decision be made, the better.

20 No idea if Your Honor were inclined to grant this
21 motion whether you would be transferring it to a different
22 judge. But in that case, it may be better to have that judge
23 hear all these pretrial issues. In fact, I think that's why
24 the AG concurred when we met and conferred that addressing
25 this now was prudent as opposed to waiting until the voir dire

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1 process.

2 And there have been courts, including in Michigan,
3 that have determined that when a great many of your potential
4 juror pool cannot be successfully screened, that it's
5 appropriate to change venue and you don't necessarily need to
6 wait to an unsuccessful voir dire process.

7 HONORABLE JUDGE NEWBLATT: All right. Thank you,
8 Mr. Olsen. All right.

9 Mr. Gambill, your response, sir.

10 MR. GAMBILL: Thank you, Your Honor. I can tell that
11 the Court has read the briefs in this case.

12 Our point is essentially the first one that the Court
13 mentioned, which is that this issue has already been decided.
14 It's not correct that the AG occurred that the Court should
15 not wait to try voir dire and try to seat the jury. We did
16 agree that if Veolia was going to raise this issue and try
17 again, they might as well do it now, early on.

18 And the decision's already been made by Judge Farah.
19 Veolia hasn't been able to identify any major errors that the
20 Court made. In fact, the Supreme Court precedent, Michigan
21 precedent is fairly clear from our perspective that in these
22 situations where there's a potential for bias, that the courts
23 should at least try to seat a jury.

24 And the court rule that Veolia cites 2 point I think
25 it's 511, those are questions that are asked of jurors,

1 potential jurors to determine whether there's some kind of
2 incurable bias.

3 Really they haven't brought any new data to the table
4 here. Their expert didn't provide any data to support their
5 analysis of the Genesee County jurors. Even if the residents
6 of the City of Flint are categorically excluded from the jury
7 pool, that's still over a quarter million people to
8 potentially select a jury from.

9 It's not correct that anyone in Genesee County is
10 related to any party in this case. The parties in this case
11 are not people. The plaintiff is a government. The defendant
12 is a company. And there's no support in Michigan law that we
13 could find showing that people can be related to those
14 entities the same way they can be related to an individual.
15 So that isn't an issue the Court needs to consider.

16 So really with -- I think our perspective is laid out
17 pretty clearly in our briefing, Your Honor. So if the Court
18 doesn't have any additional questions, I don't have any more
19 to add.

20 HONORABLE JUDGE NEWBLATT: Thank you, Mr. Gambill.

21 Mr. Olsen, do you have any rebuttal?

22 MR. OLSEN: The only thing I would say is I think,
23 respectfully, the AG's wrong on the related two points related
24 to an issue, related to an interest. And because it's not --
25 they're not related to the parens patriae, although that's

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1 debatable given that the claims brought by the state are on
2 behalf of the People. I think that's a red herring.

3 I think really the only question, and Your Honor
4 raised it -- I think it's a very fair question -- is the
5 timing as to when to decide this issue and whether Judge
6 Farah's view, which was years ago, is still right today. That
7 we would need to wait to try to seat an impartial jury through
8 the voir dire process.

9 And I won't repeat what I said before. I just think
10 that given everything that has happened and continues to
11 happen and the practical realities of the people that make up
12 Genesee County, I think we know now that it would be
13 impossible to do so.

14 HONORABLE JUDGE NEWBLATT: All right. Thank you.

15 I'll say this because it's freshest in my mind from
16 what Mr. Olsen just said, that the issue of whether residents
17 of Flint are party opponents. I -- in his earlier remarks, he
18 made the comment that by rule they are, which implicitly
19 acknowledges that things are different now, that it is just
20 the state and the argument that they're party opponents by
21 virtue of the fact that they're residents of Michigan are also
22 residents of the state. And so by that logic, this case
23 couldn't be tried anywhere in the state.

24 But in any event, I am prepared to rule on this from
25 the bench. I think that it's dispositive, the point I made

1 earlier in reading Judge Farah's decision. He made it very
2 clear in the language that I just read into the record that he
3 was deciding this until there had been an attempt at trying to
4 pick a jury and going through the process of voir dire. And
5 that if there was going to be revisited and there was going to
6 be supplementation that it would be in addition to the voir
7 dire and not in replace of it.

8 And I think that that is the law of the case. I know
9 the defense has argued that it was wrongly decided. This is
10 not a motion for reconsideration. This is not appealed. This
11 is the law of the case as it stands right now. So that really
12 is the basis of my decision.

13 And I'll adopt -- I mean, that's the law of the case
14 that's created by that opinion and order of Judge Farah. So
15 that's the basis of the decision. But I also want to comment
16 on anything that might have changed since February of 2021
17 since Judge Farah made that decision.

18 First of all, other than the fact that there had been
19 some settlements and there had been some other developments,
20 nothing really has been singled out in particular as to
21 anything that happened since Judge Farah's decision and today
22 as being a particular problem other than just cumulatively
23 there's just more stuff that's happened.

24 So that really is not a persuasive argument in that
25 we've got more things to consider that Judge Farah couldn't

1 consider. And that argument was not made by the defense
2 either in their briefing or in the argument today.

3 The other -- the other thing that was not part of
4 what Judge Farah considered was the declaration of Claude
5 Roland that was attached to the briefing and referenced in the
6 briefing. And I have reviewed that extensively.

7 I also reviewed the People's response to that. And
8 that would be Mr. Fuentes' response to it.

9 And to briefly summarize Mr. Roland's position here,
10 he -- in his declaration he provides basically a primer of
11 the topic, general concepts of bias, conventional bias,
12 cognitive bias, heuristic reasoning. All well and good. And
13 Mr. Fuentes acknowledges all of that as the basic nature of
14 the field. That's not a problem.

15 But essentially the issue is is that Mr. Roland does
16 not do anything else other than just serve a -- the media. He
17 has a survey of the articles that he's amassed and he's looked
18 at the types of articles and the types of language.

19 He makes -- it's significant to him that the
20 terminology that being called a crisis, etcetera and so forth.
21 And he terms what he surveyed as extreme pretrial publicity.
22 He describes it as virulent, extreme, and enduring.

23 And I certainly understand the language that he's
24 using. But he's basically drawing that conclusion and just
25 making an assumption I guess based on his impressions that

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1 that's what the coverage was. And that because of that, that
2 would not allow for a fair impartial jury.

3 As I read that, I understood it. But I also wondered
4 myself, there's also the idea that this has been going on for
5 10 years. There's so much information. Who knows what
6 happened or why. Just kind of an information overload thing
7 such that a juror might not even know and be able to keep an
8 open mind. I wondered as to whether or not that could be a
9 dynamic.

10 And it's been pointed out by the People, I also
11 wondered what they said is correct in that a lot of the bad
12 press has gone to the state. And so the state has reason to
13 be concerned about it. Who knows?

14 I mean, these are all questions. I see what
15 Mr. Roland's conclusions, were Dr. Roland's conclusions were.
16 I wondered if they're right. I thought about it myself, the
17 possibility of other dynamics. And the problem is is that we
18 don't know because there's not been any data.

19 Data has been formed in earlier venue motions, but
20 not in this particular case in terms of any data of Genesee
21 County jurors. So we just don't know.

22 Dr. Roland talks about the possibility of a
23 connection between the publicity and the bias in Genesee
24 County and he describes it as perfect conditions for that.
25 Again, those are his impressions. And I -- presumably,

1 they're based on his experience. Obviously he's got a large
2 amount of experience. But they're not based on any data.

3 And then he also talks about the futility of any
4 judicial remedies. He devotes approximately a paragraph to
5 that. And just concludes with a broad brush that there's just
6 no point in it, it's just not going to be effective, and
7 shouldn't even try. It's no point.

8 So I guess, to summarize Dr. Roland's position here
9 is that we don't need any data. We don't need any voir dire.
10 I'm telling you that this is publicity that's too extreme and
11 that there's a connection to bias and there's no possibility
12 of a fair jury.

13 Now Mr. Fuentes takes that on directly. And he
14 acknowledges the science that Dr. Roland references. But he
15 points out that we can't make these determinations without any
16 data.

17 Without data, all we have is high-level discussion
18 about theoretical bias. That's all we have at this point.
19 And he points out also that no high profile case could ever be
20 tried in a particular locality based on that knowledge.

21 He also pushes back very forcefully on the idea that
22 voir dire is futile and cannot solve the problem. He does not
23 believe that's true and points out, I think correctly, that
24 our system of justice is based upon the idea that voir dire is
25 effective and can work.

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1 So basically I do not believe -- again, I'm making
2 the decision based on the law of the case, but I also wanted
3 to make my comments on arguably what may be new that wasn't
4 considered by Judge Farah and that would be Dr. Roland's
5 declaration.

6 That does not move the needle with me in terms of --
7 I mean, I'm not -- he may be right. He may be right. But I
8 do not believe that that means that we should not even take
9 the effort to try to pick a jury and to conduct voir dire.

10 And I agree with the People's assertion what the law
11 is and that is what the law favors, which is that we should
12 try to conduct the voir dire.

13 So that is my ruling. For those reasons, I'm going
14 to deny the motion to change venue. And I'll just comment
15 that I do also share Judge Farah's concern and recognition of
16 the issue.

17 I'm not trying to discount that or its importance or
18 the concern that I have. Only that I intend to follow the law
19 of the case and at least try.

20 Of course this can be taken up. In terms of -- so it
21 is being denied without prejudice. But I don't expect that
22 we're going to have another one prior to the time we try to
23 select the jury.

24 MR. OLSEN: You will not, Your Honor. Thank you.

25 HONORABLE JUDGE NEWBLATT: All right. Thank you.

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1 Okay.

2 So we can move on now to the issue of the scheduling
3 of -- or scheduling order. I do have both of your
4 submissions. I guess I'd like to -- I guess I'll try to
5 sharpen the discussion and just my observation that it seems
6 as if there's a large disagreement about, I guess, theory in
7 terms of what should be the basis of discovery but not that
8 much difference between the dates themselves.

9 I note that the People are taking the position that
10 there should be limited discovery. And in fact, discovery
11 should end -- and I know this was submitted a couple of weeks
12 ago. Fact discovery should end September 6. And then defense
13 says that there should be significant fact discovery, but that
14 the completion date they agreed to be December 10. So there's
15 not that much difference between the scheduling.

16 And I guess I will open it up to counsel to whatever
17 discussion they think is useful in trying to come up with a
18 scheduling order. Who wants to -- who should start?

19 MR. KUHL: Good afternoon, Your Honor. This is
20 Richard Kuhl for the People.

21 And the point that you made is valid. Really there's
22 not that significant a difference between the proposals that
23 have been submitted to the Court. I think really the only
24 difference is that, you know, this case was filed eight years
25 ago. Substantial discovery has taken place. And we're

1 anxious to get to trial.

2 And that's really what our proposal reflects,
3 reflects that this is different than a usual case. This is
4 not a physical injury. This is a case where we're looking at
5 very specific appropriations from the state legislature.

6 It's very cut and dry what the damages are that we're
7 seeking to recover. So we don't think that there's going to
8 be a lot of discovery that's going to be required. And if we
9 can move this case forward at a faster pace, that's what our
10 preference is and that's really what our proposal reflects.

11 HONORABLE JUDGE NEWBLATT: I -- your position
12 essentially is that there's really nothing else to do with
13 regard to liability. That's already been discovered. And
14 really we're talking about damages. And really all you need
15 to know about damages you can find in the audit essentially if
16 I'm describing your position. In the audit, what else is
17 there to talk about? Is that your position?

18 MR. KUHL: In large part, I think that's correct,
19 Your Honor. It's very cut and dry in this situation. Again,
20 we're not talking about somebody's mental injury or their
21 physical injury or what their past economic damages are.
22 That's not the case that we have before you.

23 There was an emergency declaration and the state
24 reacted to that and appropriated very specific money for the
25 City of Flint. So we don't have to really undertake any

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1 significant analysis as to what the actual damages are.
2 They're right there and they're addressed in the audit report.

3 We understand some additional discovery is going to
4 be down. We're not expecting otherwise.

5 HONORABLE JUDGE NEWBLATT: Are you expecting them to
6 just say, okay, well it's in the report, so --

7 MR. KUHL: Oh, no, no, no. No, not at all. But it
8 at least identifies the damages that we're seeking. And that
9 then allows them to tailor their discovery.

10 HONORABLE JUDGE NEWBLATT: Okay. So you're just
11 saying that that obviates the need for an extensive amount of
12 discovery.

13 MR. KUHL: Exactly.

14 HONORABLE JUDGE NEWBLATT: Because it gives them a
15 roadmap and so they can just follow that and then will tell
16 them what they need to do.

17 MR. KUHL: Exactly.

18 HONORABLE JUDGE NEWBLATT: So instead of, what, seven
19 months, it can be done in three.

20 MR. KUHL: It can be done quickly. And the fact of
21 the matter is, if we get to the end of the time period and
22 they feel like they need more time, they can always come to
23 Your Honor. No scheduling order is ever cast in stone.

24 HONORABLE JUDGE NEWBLATT: Okay.

25 MR. KUHL: But we shouldn't presume ahead of time

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1 that additional time is going to be required.

2 HONORABLE JUDGE NEWBLATT: All right. Thank you,
3 sir.

4 Mr. Olsen.

5 MR. OLSEN: Yes, Your Honor.

6 I think you started in the right place. There isn't
7 that big a difference. Three months in fact discovery. Then
8 there's some difference in like expert discovery because the
9 state allocates them more time for depositions than us and
10 it's imbalanced.

11 But let me address the core difference and opinion
12 about the scope of discovery, which I think is at the heart of
13 why we disagree here. And I think Your Honor and the state
14 agree, characterized it exactly right. The state's position
15 is here's our audit report, there's other damages. Accept us
16 at our word and move on. And if you want to kick the tires a
17 little bit, that should only take four months and not seven.

18 I think the reason there's only a three-month
19 difference right now is we came up with what we thought to
20 accommodate the state's interest as they expressed in the meet
21 and confer, most aggressive schedule that we thought was
22 feasible.

23 But the idea that the cake is baked on their damages
24 theory is absurd. They have hundreds of millions of dollars
25 of, quote, "damages", close quote. And in all kinds of

1 different categories. And it's not just what is the amount.
2 It's what was spent, when was it spent, why was it spent, and
3 why can the state take the position and prove that those
4 expenditures were caused by VNA's alleged misconduct?

5 And so that is going to require extensive fact
6 discovery as to what was spent, when it was spent, why it was
7 spent, what was approved, why was it approved, what was the
8 thought processes, why did these expenditures need to be made,
9 and when do those discussions take place, and what work did it
10 relate to. I imagine a lot of these expenses related to both
11 before we even got on scene in Flint.

12 So it's not just a mathematical equation. It's a how
13 were those alleged damages tied to VNA's alleged misconduct.
14 And that is going to be extensive discovery. There are many
15 agencies that are involved with these various damages
16 categories.

17 By the way, some of the categories in the audit
18 report on their face couldn't possibly be damages allocated to
19 VNA. We asked for some clarification to try to expedite our
20 scope of disagreement. We didn't get it.

21 But the people involved in those decisions, I imagine
22 we are going to ask for and it certainly is reasonably
23 calculated to lead to discoverable and admissible evidence,
24 why were those decisions made, what discussions were taking
25 place about why those expenditures were necessary and for

1 what, and how did that relate to in time and in cause to what
2 VNA did or didn't do.

3 There will be many depositions necessary of the
4 people involved in that process for approved and spending that
5 money as to why it was done, how it was done, and what it was
6 done for.

7 Similarly, the state here has an unjust enrichment
8 claim. And so there hasn't been discovery related to a number
9 of areas as to whether the state minimized its damages even if
10 they were appropriate and what steps they took to do that and
11 whether the alleged unjust enrichment damages were, in fact,
12 unjust.

13 And the nonparty at fault claims are going to be
14 somewhat different in the parens patriae case than they are in
15 the federal discovery that's been taken to date in terms of
16 additional involvement with respect to these expenditures and
17 additional involvement by certain state actors with respect to
18 this process and their responsibility for parts of this
19 process.

20 And I think if you just step back, I think the reason
21 that this is appropriate to address now is I imagine we are
22 going to come back to the court over and over again in
23 discovery motion practice on a fundamental just difference of
24 opinion here where the state says, yeah, you don't really need
25 any discovery to evaluate our claims. And it's true.

1 I understand why they're taking the position. There
2 has been massive amounts of discovery in the federal cases
3 related to VNA's conduct. And so with respect to the case
4 they need to put on, there has been massive discovery related
5 to those issues.

6 And so I get why they don't want to allow us
7 discovery related to the issues that are part of our defense
8 and undermining their very aggressive and robust damages
9 claims and the lack of causation between those alleged damages
10 and VNA's conduct.

11 And so we have no intention of conducting duplicative
12 discovery from what's already taken place in the federal
13 court. We agree that can be used here. I think the state
14 agrees that can be used here.

15 But there are absolutely brand new issues as relates
16 to causation, damages, and nonparty at fault that there's no
17 dispute hasn't happened yet. And there's no way that can be
18 done in four months.

19 HONORABLE JUDGE NEWBLATT: Okay. So in terms of
20 liability, is there any fact discovery that you're claiming
21 needs to be done there?

22 MR. OLSEN: Well, I suspect that there is going to be
23 additional fact discovery in terms of nonparty at fault
24 responsibility.

25 With respect to VNA's conduct and the underlying

1 professional negligence claim, I would think the vast majority
2 or all of that discovery has been done.

3 MR. KUHL: And Your Honor -- (crosstalk)

4 MR. OLSEN: Unjust enrichment also might --
5 (crosstalk)

6 Sorry, Mr. Kuhl.

7 MR. KUHL: Sorry. I apologize. We disagree that any
8 additional discovery on liability is necessary. It's been
9 completed already in the other part of the case.

10 And the lack of causation is just a red herring. The
11 fact of the matter is VNA was involved in the city January,
12 February, March of 2015. Damages that we're talking about
13 came well after that. It was an -- VNA's actions exacerbated
14 the situation.

15 So there's not going to be any allocation that's
16 going to be required. So raising that as a need for discovery
17 we think is simply incorrect.

18 And the argument that the state overspent in the City
19 of Flint, I find it hard to believe that somebody is going to
20 make such an argument to anybody sitting in Flint or to a
21 Genesee County jury where we are often criticized for not
22 spending enough. So again, we don't think that's really a
23 rational explanation.

24 The real explanation is they just want to delay this.
25 And this has been delayed long enough. And we would like to

1 move it along as quickly as possible.

2 I would just one more point, Mr. Olsen, is that you
3 had raised the question about the expert discovery. Well,
4 there's a good reason for that. The state doesn't believe
5 it's going to be -- require many experts, a handful at most.
6 But what we've seen from the federal case is that for every
7 expert that the plaintiffs identify, they identify two or
8 three.

9 So yes, we had additional time period extended for
10 discovery on VNA's experts. But that's because of their past
11 actions. If they would agree just to identify the same number
12 of experts that the state identifies, we'd be happy to cut our
13 time period. But again, that hasn't been there modus operandi
14 in the past.

15 MR. OLSEN: Your Honor, may I make one more point? I
16 mean, the state's position throughout this motion and in this
17 argument is this is what we believe, this is what we think.
18 And we're right, so the defense doesn't need discovery to
19 develop its defenses and dispute what we think and what our
20 positions are.

21 Of course there's going to be allocation among
22 nonparties at fault. The state has taken the position
23 previously that some of those nonparty at faults, including
24 LAN, are responsible for some of those damages.

25 And more importantly it's not as simple as that. The

1 state has damages claims related to community programs. Why
2 are those community programs exclusively related to even lead
3 in the water, let alone VNA's contribution to lead in the
4 water?

5 There's going to be extensive discovery about what
6 was spent, why it was spent, when those decisions were made,
7 and what it was tailored to.

8 Similarly, infrastructure expenses. The
9 infrastructure expenses the state believed were necessary go
10 far beyond any credible claim of damages associated with VNA's
11 conduct.

12 So there's going to be extensive fact discovery
13 that's necessary to evaluate how the state can possibly claim
14 that these are tailored to VNA's alleged misconduct and not
15 community improvement or community programs or things
16 completely unrelated to what VNA did or didn't do and whether
17 the state appropriately appropriated and spent this money.

18 And it's our right under Michigan's policy of liberal
19 and broad discovery to conduct that discovery.

20 HONORABLE JUDGE NEWBLATT: If I were to decide the
21 deadline for the discovery, would the rest fall in place?

22 MR. KUHL: I think we could probably have a
23 significant discussion if Your Honor were to do that. We've
24 been able to work through these issues in the past. I mean,
25 there are some things on their list that we think are not

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1 following Michigan procedures and that we disagree with.

2 But I would think that for the vast majority of
3 these, we'd be able to work through if the Court made that
4 decision.

5 HONORABLE JUDGE NEWBLATT: Mr. Olsen.

6 MR. OLSEN: I think that's probably right. I mean, I
7 don't want to prejudge it. But the other disputes are
8 smaller, for sure, than the one you identified. And if both
9 sides are willing to make reasonable compromise, you would
10 think that we could work the vast majority of those issues
11 out.

12 HONORABLE JUDGE NEWBLATT: Right. All right.

13 I guess what I'm thinking about doing then, you know,
14 this philosophical debate about what's fair game, I don't know
15 if I can really litigate that based on what I've heard. It's
16 really too general. I'd probably have to have that teed up
17 more specifically.

18 I do see both sides and the points that they're
19 making. What I think I'm going to do here is I'm going to
20 pick just a completion date. I'm going to hit the starting
21 gun. And I'm going to have you submit hopefully a stipulated
22 scheduling order based upon that.

23 And if there's any dispute about that scheduling
24 order, then we can take that up at the next conference date.

25 Does that sound reasonable?

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1 MR. OLSEN: Yes, Your Honor.

2 I assume you're then suggesting as we go and as the
3 issues get more granular, we can tee them up, if necessary, as
4 to timing and scope.

5 HONORABLE JUDGE NEWBLATT: Yes. Does that seem okay
6 before I give you the date?

7 MR. OLSEN: Yes, Your Honor.

8 HONORABLE JUDGE NEWBLATT: All right. The date I'm
9 going to give you is November 10.

10 MR. KUHL: Thank you, Your Honor.

11 HONORABLE JUDGE NEWBLATT: Okay. Very good. I think
12 that's it from my end.

13 THE COURT: And that's it from my end. We have not
14 yet picked the next status conference. So I'll -- we'll look
15 at the calendar and that make held jointly. Judge Newblatt
16 and I will discuss it. So that will all be on the docket as
17 soon as it's set up.

18 Anything else at this time from anyone? Okay. All
19 right.

20 HONORABLE JUDGE NEWBLATT: Thank you.

21 THE COURT: Thank you, Judge Newblatt.

22 HONORABLE JUDGE NEWBLATT: Thank you, Judge Levy.
23 Thank you, counsel.

24 MR. OLSEN: Thank you, Your Honor.

25 MR. KUHL: Thank you.

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1 THE COURT: Take care. And we will reconvene soon

2 I'm sure. Okay. Thank you.

3 (Proceedings Concluded)

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6 CERTIFICATE OF OFFICIAL COURT REPORTER

7 I, Jeseca C. Eddington, Federal Official Court

8 Reporter, do hereby certify the foregoing 31 pages are a true

9 and correct transcript of the above entitled proceedings.

10 /s/ JESECA C. EDDINGTON
11 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

05/20/2024
Date

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